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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No.

Plaintiff,

COMPLAINT

v.

THE STATE OF OREGON, acting by and
through its Department of Environmental
Quality,

Plaintiff-Intervenor,

v.

TRUAX OIL, INC.,

Defendant.

I. COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

II. NATURE OF THE ACTION

1. This is a civil action against Truax Oil, Inc. ("Truax" or "Defendant"), seeking an assessment of civil penalties for violation of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 et seq., for the discharge of approximately 11,000 gallons of diesel and gasoline to the environment, including discharge of diesel and gasoline into or upon navigable waters of the United States and/or adjoining shorelines resulting from a truck and trailer roll-over which occurred near milepost 118 on U.S. Highway 5, near Roseburg, Oregon, on March 11, 2006 (the "Discharge").

III. JURISDICTION, AUTHORITY AND VENUE

2. This Court has jurisdiction over this matter pursuant to Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in the District of Oregon under 28 U.S.C. §§ 1391 and 1395(a); and Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), because the claim arose in the district and Defendant does business in the district.

IV. DEFENDANT

4. Defendant Truax is a corporation based in Corvallis, Oregon.

5. At all times pertinent to this action, Truax was a "person" within the meaning of

Sections 301(a), 311(a)(7), and 502(5) of the CWA, 33 U.S.C. §§ 1311(a), 1321(a)(7) and 1325(5).

6. At all times pertinent to this action, Defendant was the “owner or operator,” as defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the truck and trailer that rolled over resulting in the Discharge.

V. STATUTORY BACKGROUND

7. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters or adjoining shorelines of the United States in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States.

8. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA, acting through its delegated authority under Executive Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973), has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that, *inter alia*, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.

9. The CWA defines the term “discharge” to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping.” 33 U.S.C. § 1321(a)(2).

10. Any person who is an “owner” or “operator” of, inter alia, an “onshore facility” from which oil is discharged in violation of the Act is subject to a civil penalty in an amount up

to \$32,500 per day or up to \$1,100 per barrel of oil discharged. 33 U.S.C. § 1321(b)(7)(A), 28 U.S.C. § 2461.

VI. GENERAL ALLEGATIONS

11. At the time of the Discharge, Defendant marketed and transported liquid petroleum in the state of Oregon. Defendant is a “person” within the meaning of 33 U.S.C. § 1321(a)(7).

12. On March 11, 2006, a Truax truck and trailer rolled over while traveling south near milepost 118 on U.S. Highway 5, near Roseburg, Oregon, adjacent to an unnamed tributary of Roberts Creek. Roberts creek is a tributary of the South Fork of the Umpqua River.

13. The Oregon State Police cited the driver of the truck for driving carelessly.

14. The truck carried a load of approximately 9,000 gallons of gasoline, and the attached trailer carried a load of approximately 2,000 gallons of diesel.

15. The roll-over of the truck and trailer caused a discharge of gasoline and diesel to an unnamed tributary of Roberts Creek. Truax was the “owner” and “operator” of the truck and trailer within the meaning of 33 U.S.C. § 1321(a)(6).

16. Spill responders observed a film or sheen upon or discoloration of the surface of the water or adjoining shorelines of Roberts Creek after the spill. The spill constituted a “discharge” within the meaning of 33 U.S.C. § 1321(a)(2).

17. At all times pertinent to this action, the truck and trailer that rolled over was an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

18. Diesel fuel is an “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

19. Gasoline is an “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

20. Roberts Creek is a tributary of the South Fork of the Umpqua River and a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

21. Roberts Creek and the South Fork of the Umpqua River are identified by the State of Oregon and the National Oceanic and Atmospheric Administration as habitat for cutthroat trout.

VII. CLAIM FOR RELIEF

22. The allegations of the foregoing paragraphs are incorporated herein by reference.

23. Defendant’s release of diesel and gasoline resulting from the roll-over of the truck and trailer was a “discharge” as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and was of a quantity sufficient to cause a sheen upon or discoloration of Roberts Creek or its adjoining shorelines.

24. On March 11, 2006, Defendant discharged oil in harmful quantities into or upon Roberts Creek or its adjoining shorelines, within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2). Defendant accordingly is liable for a civil penalty of up to \$32,500 per day of violation or an amount up to \$1,100 per barrel of oil discharged. 33 U.S.C. § 1321(b)(7)(A).

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VIII. PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations set forth above, the United States of America requests that this Court:

1. Impose civil penalties on Defendant in an amount of up to \$1,100 per barrel of reportable quantity of oil discharged in violation of Section 311(b)(3) of the CWA.
2. Award the United States its costs of this action; and
3. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Environment and Natural Resources Division
United States Department of Justice

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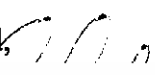
§ 1321(a)(2), and was of a quantity sufficient to cause a sheen upon or discoloration of Roberts Creek or its adjoining shorelines.


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PRAYER FOR RELIEF

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